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Paper No.

Marc T. Morley  
Knobbe Martens Olson & Bear  
2040 Main Street  
14th Floor  
Irvine CA 92614

**COPY MAILED**

**JUL 09 2007**

**OFFICE OF PETITIONS**

In re Application of :  
Desnoyers et al. : DECISION ON APPLICATION  
Application No. 10/036,150 : FOR  
Filed: December 26, 2001 : PATENT TERM ADJUSTMENT  
Atty Docket No. P3030R1C9 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705," filed April 12, 2007. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from three hundred seventy-five (375) days to five hundred fifty-four (554) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is FIVE HUNDRED FIFTY-FOUR (**554**) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On January 10, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 375 days. On April 12, 2007, applicants timely<sup>1</sup> submitted the instant application for patent term adjustment. Applicants dispute the reduction of 179 days associated with the filing of a response after final Office action on November 28, 2006. Applicants point out that the Office action mailed September 26, 2006 restarted the period for

<sup>1</sup> The Issue Fee payment was also received on April 12, 2007.

response and their response was filed within three months of the mailing date of the re-mailed Office action.

Applicants state that no patent granted on this application is subject to a terminal disclaimer.

Applicants are correct that any delay should be calculated based on the date of the Restarted Response Period and not based on the date of the mailing of the original Office action. As their response was received within three months of the Letter Restarting Period for Response (the re-mailed Office action), there was no applicant delay within the meaning of §1.704(b).

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is five hundred fifty-four (554) days.

It is noted that the relevant Office action was first returned by the United States Post Office as the address for the practitioner had changed. A review of the record reveals that a change of address was filed on December 9, 2005 by Marc Morley as attorney of record. However, this change of address may not have been entered because attorney Morley was not of record. A further review of the application history reveals that on filing of the application applicants submitted an executed declaration and power of attorney appointing

all attorneys and/or agents associated with the following  
Patent Office Issued Customer Number ...

Ginger R. Dreger, Esq., Reg. No. 33,055, Customer No.  
30,313

With respect to this appointment, petitioner's attention is directed to MPEP 403, which provides that:

Where an applicant appoints all of the practitioners associated with a Customer Number as well as a list of individually named practitioners, such action would be treated as only an appointment of all of the practitioners associated with a Customer Number due to the potential for confusion and data entry errors in entering registration numbers from plural sources. Furthermore, Office computer systems do not allow for entry of both a power of attorney

to a list of practitioners associated with a Customer Number and a list of practitioners. See MPEP 403.

Current Office records indicate that attorney Dreger is not an attorney associated with customer number 30,313. The reference to her number individually with the customer number in the appointment led to the Office erring and entering only attorney Dreger as the attorney of record. Accordingly, when attorney Morley attempted to change the correspondence address, the request should not have been entered. Thus, it is suggested that any future appointment of attorneys associated with a customer number be clearly directed only to the customer number.


The record has been updated to associate the attorneys of customer number 30,313 as attorneys of record in this application.

Petitioner is advised that future delays, which are determined to be associated with applicant's failure to properly change the application correspondence address may be deemed a failure to engage in reasonable efforts to conclude prosecution of an application.

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Patent Publication for issuance of the patent. The patent term adjustment indicated on the patent will include any additional patent term adjustment accrued for Office delay in issuing the patent after payment of the issue fee and all outstanding requirements having been met.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized flourish at the end.

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen

## PTA Calculations for Application: 10/036150

Application Filing Date:	12/26/2001	PTO Delay (PTO):	561
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	186
Post-Issue Petitions:	0	Total PTA (days):	554
PTO Delay Adjustment:	179		

## File Contents History

Number	Date	Contents Description	PTO	APPL	START
58	07/06/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	179		
51	01/10/2007	MAIL NOTICE OF ALLOWANCE			
50	01/10/2007	MAIL FORMAL DRAWINGS REQUIRED			
49	12/28/2006	ISSUE REVISION COMPLETED			
48	12/28/2006	FORMAL DRAWINGS REQUIRED			
47	12/28/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
46	12/28/2006	CASE DOCKETED TO EXAMINER IN GAU			
45	12/28/2006	NOTICE OF ALLOWABILITY			
44	12/05/2006	DATE FORWARDED TO EXAMINER			
43	11/28/2006	AMENDMENT AFTER FINAL REJECTION		179	37
42	11/15/2006	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
41	11/07/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
40	09/26/2006	MAIL NOTICE OF RESTARTED RESPONSE PERIOD			
39	09/26/2006	LETTER RESTARTING PERIOD FOR RESPONSE (I.E. LETTER RE: REFERENCES)			
38	06/08/2006	CORRESPONDENCE ADDRESS CHANGE			
37	03/02/2006	MAIL FINAL REJECTION (PTOL - 326)			
36	02/28/2006	FINAL REJECTION			
35	12/19/2005	DATE FORWARDED TO EXAMINER			
34	12/09/2005	RESPONSE AFTER NON-FINAL ACTION			
33	12/19/2005	CORRESPONDENCE ADDRESS CHANGE			
32	09/12/2005	MAIL NON-FINAL REJECTION			
31	09/07/2005	NON-FINAL REJECTION			
30	06/27/2005	RULE 47 / 48 CORRECTION OF INVENTORSHIP			

		PAPERS FILED			
29	06/27/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
28	07/06/2005	DATE FORWARDED TO EXAMINER			
27	06/27/2005	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
26	07/06/2005	DATE FORWARDED TO EXAMINER			
25	06/27/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)		3	21
24	07/06/2005	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
23	06/28/2005	CASE DOCKETED TO EXAMINER IN GAU			
22	06/27/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
21	03/24/2005	MAIL FINAL REJECTION (PTOL - 326)			
20	03/21/2005	FINAL REJECTION			
19	01/03/2005	DATE FORWARDED TO EXAMINER			
18	12/13/2004	RESPONSE AFTER NON-FINAL ACTION		4	16
17	12/13/2004	WORKFLOW INCOMING AMENDMENT IFW			
16	09/09/2004	MAIL NON-FINAL REJECTION	561		-1
15	09/07/2004	NON-FINAL REJECTION			
14	01/05/2004	CASE DOCKETED TO EXAMINER IN GAU			
13	08/20/2003	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
12	07/05/2002	MISCELLANEOUS INCOMING LETTER			
11	05/03/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	12/26/2001	PRELIMINARY AMENDMENT			
9	02/28/2002	CASE DOCKETED TO EXAMINER IN GAU			
8	02/20/2002	APPLICATION DISPATCHED FROM OIPE			
7	02/19/2002	APPLICATION IS NOW COMPLETE			
5	02/08/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
4	01/22/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
3	01/28/2002	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
2	12/26/2001	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
1	12/26/2001	INITIAL EXAM TEAM NN			

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